

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ALDA C. MONTUORI

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 4 Hillside Ave. Lynbrook, NY 11563

Address of Defendant: 507 Prudential Road, Marsham, PA 19002

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations

7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify)

Craig Ther Kimmel

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Ther Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 6-27-11

Craig Ther Kimmel
Attorney-at-Law

57100
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6-27-11

Craig Ther Kimmel
Attorney-at-Law

57100
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Alda C. Montuori

v.

NCO Financial Systems, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☒

<u>6-27-11</u> Date	<u>Gregory Thier Kimmel</u> Attorney-at-law	<u>Alda C. Montuori</u> Attorney for
<u>215-540-8888</u> Telephone	<u>877-788-2864</u> FAX Number	<u>kimmel@credithaw.com</u> E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

ALDA C. MONTUORI,

Plaintiff

V.

NCO FINANCIAL SYSTEMS, INC.,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

ALDA C. MONTUORI ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Plaintiff is a natural person residing in Lynbrook, New York, 11563.

8. Defendant is a national debt collection company with corporate headquarters at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3 12. In particular, the FDCPA broadly enumerates several practices considered
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
7 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
8 collector may not use any false, deceptive, or misleading representation or means in connection
9 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
10 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
14 connection with the collection of a debt.
15

16 13. In enacting the FDCPA, the United States Congress found that “[t]here is
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
18 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
19 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
20 additionally found existing laws and procedures for redressing debt collection injuries to be
21 inadequate to protect consumers. 15 U.S.C. § 1692b.
22

23 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
24 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
3

4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect an alleged consumer
6 debt from Plaintiff.
7

8 16. The alleged debt at issue arose out of transactions, which were primarily for
9 personal, family, or household purposes.

10 17. For the past two years, Plaintiff has been making monthly payments to Defendant
11 of approximately \$175.00 to satisfy an alleged debt.

12 18. In or around March 2009, Plaintiff lost her job, but continued making the monthly
13 payments with her unemployment check.

14 19. On several occasions, Plaintiff’s husband had offered to settle what was left on
15 the account with Defendant’s representative, identified to Plaintiff as “Mr. Kay.”

16 20. However, Mr. Kay refused to settle the alleged debt. So, Plaintiff continued to
17 make monthly payments.
18

19 21. Then, in or around the end of January 2011, Plaintiff’s unemployment
20 compensation ended.

21 22. Plaintiff informed Mr. Kay that she was no longer receiving unemployment and
22 that she was unable to make the monthly payments.

23 23. Plaintiff again offered to settle the alleged debt, but Mr. Kay refused, stating to
24 Plaintiff that he “didn’t care” and that “she better make sure she had money in that account” to
25 make payments.

1 24. At that same time, Defendant began making continuous and repeated telephone
2 calls to Plaintiff's home telephone with the intent to annoy, abuse, and harass Plaintiff.

3 25. Defendant placed repeated calls to Plaintiff's telephone almost every day, causing
4 Plaintiff to receive, on average, at least two (2) collection calls a day, and at times, more than
5 four (4) collection calls a day.

6 26. Defendant repeated calls to Plaintiff's home telephone caused Plaintiff to receive,
7 on average, more than ten (10) collection calls a week.

8 27. Most recently, on Mach 29, 2011, Defendant contacted Plaintiff on her home
9 telephone in its attempts to collect a debt.

10 28. In order to stop Defendant's repeated telephone calls, Plaintiff had to obtain
11 counsel.

12 29. Defendant's actions in attempting to collect the alleged debt were harassing,
13 abusive and highly deceptive.
14

15
16 **CONSTRUCTION OF APPLICABLE LAW**

17 30. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
18 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
19 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
20 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
21 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
22 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

23 31. The FDCPA is a remedial statute, and therefore must be construed liberally in
24 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
25

1 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
2 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the
3 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
4 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
5 2002).

6 32. The FDCPA is to be interpreted in accordance with the “least sophisticated”
7 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
8 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
9 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
10 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
11 and the fact that a false statement may be obviously false to those who are trained and
12 experienced does not change its character, nor take away its power to deceive others less
13 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
14 ensures protection of all consumers, even naive and trusting, against deceptive collection
15 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
16 collection notices. Clomon, 988 F. 2d at 1318.
17
18

19
20 **COUNT I**
21 **DEFENDANT VIOLATED THE**
22 **FAIR DEBT COLLECTION PRACTICES ACT**

23 33. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
24 more of the following ways:

- 25 a. Defendant violated the FDCPA generally;
- b. Defendant violated §1692d of the FDCPA by harassing Plaintiff in

1 connection with the collection of an alleged debt;

- 2 c. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's
3 telephone to ring repeatedly or continuously with the intent to harass, annoy
4 or abuse Plaintiff;
- 5 d. Defendant violated §1692e of the FDCPA by using false, deceptive, or
6 misleading representations or means in connection with the collection of a
7 debt;
- 8 e. Defendant violated §1692f of the FDCPA by using unfair and unconscionable
9 means with Plaintiff to collect or attempt to collect a debt; and
- 10 f. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
11 and failed to comply with the FDCPA.
12

13
14 WHEREFORE, Plaintiff, ALDA C. MONTUORI, respectfully pray for a judgment as
15 follows:

- 16 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
17 1692k(a)(1);
- 18 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
19 15 U.S.C. § 1692k(a)(2)(A);
- 20 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
21 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 22 d. Any other relief deemed appropriate by this Honorable Court.
23
24
25

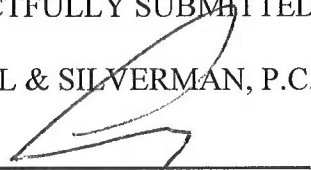
DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, ALDA C. MONTUORI, demands a jury trial in
this case.

DATED: 6-27-11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: 
Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com